

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE COMMISSIONER OF LABOR AND INDUSTRY

In the Matter of Shaun Garrett Anderson,
individually, and d/b/a Level Construction
and Restoration

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

This matter came on before Administrative Law Judge Beverly Jones Heydinger on February 11, 2010, for a prehearing conference at the Office of Administrative Hearings, 600 North Robert Street, Saint Paul, Minnesota. The prehearing conference was held pursuant to a Notice and Order for Prehearing Conference, issued January 8, 2010.

Christopher M. Kaisershot, Assistant Attorney General, appeared on behalf of the Minnesota Department of Labor and Industry (Department). Shaun Garrett Anderson (Respondent) did not appear in person or by counsel. The record closed upon the Respondent's default on February 11, 2010.

STATEMENT OF ISSUE

1. Did Respondent engage in activities of a residential building contractor, residential remodeler or roofer without the required license, in violation of Minn. Stat. §§ 326.84, subds. 1 and 1b, 326.842, and 326.91, subds. 1 (5) and 4 (2006)?¹

2. Did the Respondent perform in breach of contract and otherwise demonstrate that he was incompetent, untrustworthy, or financially irresponsible by failing to refund a homeowner's down payment or to satisfy the homeowner's judgment, in violation of Minn. Stat. § 326.91, subds. 1 (4), (6) and 4?

Based upon all of the files, records and proceedings herein, the Administrative Law Judge makes the following:

¹ Effective, December 1, 2007, the Department's enabling legislation was substantially revised and re-codified in chapter 326B. The law in effect at the time of Respondent's alleged violations was the 2006 version of the statutes, Minn. Stat. §§ 326.83-326.992(2006). Unless otherwise noted, references are to Minnesota Statutes 2006 edition.

FINDINGS OF FACT

1. On January 10, 2010, a copy of the Notice and Order for Prehearing Conference was sent via first class mail to Shaun Garrett Anderson, d/b/a Level Construction & Restoration, 7501 West 112th Street, Minneapolis, MN 55438, the last address on file for the Respondent, as appears from an Affidavit of Service by first class mail, on file herein. The Department previously sent mail to the Respondent by certified mail to the same address and it was delivered.²

2. The Notice and Order for Prehearing was returned to the Department by the Post Office.

3. On January 13, 2010, the Administrative Law Judge (ALJ) sent a letter to the Respondent at the same address and it was returned to the Office of Administrative Hearings by the Post Office.

4. The Respondent failed to appear at the prehearing conference, did not obtain the ALJ's prior approval to be absent from the prehearing conference, did not file a Notice of Appearance, and it did not request a continuance or any other relief.

5. The Notice and Order of Prehearing Conference contained the following informational warning:

Respondent's failure to appear at the prehearing conference, settlement conference, or the hearing, or failure to comply with any order of the Administrative Law Judge, may result in a finding that Respondent is in default, that the Department's allegations contained in the Statement of Charges may be accepted as true, and that Respondent may be subject to discipline by the Commissioner, including revocation, suspension, censure, or the imposition of civil penalties.

6. Because Respondent failed to appear, he is in default.

7. Pursuant to Minnesota Rules, part 1400.6000, the allegations contained in the Notice of and Order for Hearing and Notice of Prehearing Conference are taken as true and incorporated by reference into these Findings of Fact.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

² Notice and Order for Prehearing Conference, Allegation 4.

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Labor and Industry are authorized to consider the charges against Respondent under Minn. Stat. §§ 326B.84, 45.027, subd. 1, 45.024 and 14.50 (2008).

2. Respondent received due, proper and timely notice of the charges against him, and of the time and place of the prehearing conference. Respondent failed to provide a current address to which the Notice and Order of Prehearing Conference could be mailed. This matter is, therefore, properly before the Commissioner and the Administrative Law Judge.

3. The Department has complied with all relevant substantive and procedural legal requirements.

4. Under Minn. R. 1400.6000, a contested case may be decided adversely to a party who defaults. On default, the allegations of and the issues set out in that Notice of and Order for Hearing or other pleading may be taken as true or deemed proved without further evidence.

5. The Respondent is in default herein as a result of his failure, without the ALJ's prior consent, to appear at the prehearing conference.

6. Respondent engaged in activities of a residential building contractor, residential remodeler or roofer without the required license, in violation of Minn. Stat. §§ 326.84, subds. 1 and 1b, 326.842, and 326.91, subds. 1 (5) and 4.

7. Respondent performed in breach of contract and otherwise demonstrated that he was incompetent, untrustworthy, or financially irresponsible by failing to refund a homeowner's down payment or to satisfy the homeowner's judgment, in violation of Minn. Stat. § 326.91, subds. 1 (4), (6) and 4.

8. Disciplinary action against the Respondent is in the public interest.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED: that the Commissioner of the Department of Labor and Industry take adverse action against Respondent's license, censure

Respondent, and/or impose a civil penalty upon Respondent.

Dated this 24th day of February, 2010.

s/Beverly Jones Heydinger

BEVERLY JONES HEYDINGER
Administrative Law Judge

Reported: Default

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of Labor and Industry will make the final decision after reviewing the record and may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61 (2008)³, the Commissioner's decision shall not be made until this Report has been available to the parties to the proceeding for at least ten (10) days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Steve Sviggum, Commissioner, Attention: Wendy Willson Legge, Director of Legal Services, Minnesota Department of Labor and Industry, 443 Lafayette Road, St. Paul, MN 55155, (651) 284-5126, to ascertain the procedure for filing exceptions or presenting argument to the Commissioner.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law. If the Commissioner fails to issue a final decision within 90 days of the close of the record under Minn. Stat. § 14.61, this report becomes a final decision. In order to comply with Minn. Stat. § 14.62, subd. 2a, the Commissioner must then return the record to the Administrative Law Judge within 10 working days to allow the Judge to determine the discipline to be imposed.

MEMORANDUM

The Department has alleged facts sufficient to support taking disciplinary action against the Respondent. A person whose total gross receipts from regulated projects do not exceed \$15,000 may be exempted from the residential contractor licensing requirement. However, in order to be exempt, the person must obtain a certificate of exemption from the Commissioner.⁴ The Respondent failed to appear and there was no evidence that he held an exemption from the licensing requirement.

B.J.H.

³ Citations in this Notice are to Minnesota Statutes, 2008 edition.

⁴ Minn. Stat. § 326.84, subd. 3 (5) (2006).